

House Bill 3187

Sponsored by Representative MITCHELL

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes unlawful employment practice for employer to refuse to provide to requesting state agency employment verification and any other information that is necessary to determine individual's eligibility to receive public assistance provided by agency.

Makes unlawful employment practice for employer to retaliate or discriminate against individual because state agency has requested employment verification or information necessary to determine individual's eligibility for public assistance or because individual has applied for or received public assistance.

A BILL FOR AN ACT

1
2 Relating to unlawful employment practices regarding public assistance; creating new provisions; and
3 amending ORS 411.320 and 659A.885.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 3 of this 2019 Act are added to and made a part of ORS**
6 **chapter 659A.**

7 **SECTION 2. (1) As used in this section and section 3 of this 2019 Act:**

8 (a) "Public assistance" has the meaning given that term in ORS 411.010.

9 (b) "State agency" has the meaning given that term in ORS 36.110.

10 (2) It is an unlawful employment practice for an employer to refuse to provide to a re-
11 questing state agency employment verification and any other information that is necessary
12 for the agency to determine an individual's eligibility to receive public assistance from the
13 agency.

14 (3) If an individual's receipt of public assistance from the state agency has been delayed
15 or denied because of the employer's failure to provide the requested employment verification
16 or any other information described under subsection (2) this section, the individual may file
17 a complaint under ORS 659A.820 and may bring a civil action under ORS 659A.885 and recover
18 relief as provided by ORS 659A.885 (1) to (3).

19 **SECTION 3. (1) It is an unlawful employment practice for an employer to retaliate or in**
20 **any way discriminate against an individual with respect to hire or tenure or any other term**
21 **or condition of employment because:**

22 (a) A state agency has requested that the employer provide employment verification or
23 any other information that is necessary for the agency to determine the individual's eligi-
24 bility to receive public assistance from the agency; or

25 (b) The individual has applied for or received public assistance from a state agency.

26 (2) An individual may file a complaint under ORS 659A.820 alleging a violation of this
27 section and may bring a civil action under ORS 659A.885 and recover relief as provided by
28 **ORS 659A.885 (1) to (3).**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

SECTION 4. ORS 411.320 is amended to read:

411.320. (1) For the protection of applicants for and recipients of public assistance, except as otherwise provided in this section, the Department of Human Services may not disclose or use the contents of any public assistance records, files, papers or communications for purposes other than those directly connected with the administration of the public assistance programs or necessary to assist public assistance applicants and recipients in accessing and receiving other governmental or private nonprofit services, and these records, files, papers and communications are considered confidential subject to the rules of the department. In any judicial or administrative proceeding, except proceedings directly connected with the administration of public assistance or child support enforcement laws, their contents are considered privileged communications.

(2) Nothing in this section prohibits the disclosure or use of contents of records, files, papers or communications for purposes:

(a) Directly connected with the establishment and enforcement of support obligations pursuant to the Title IV-D program[.]; or

(b) Described in section 2 of this 2019 Act.

(3) Nothing in this section prohibits the disclosure of the address, Social Security number and photograph of any applicant or recipient to a law enforcement officer at the request of the officer. To receive information pursuant to this section, the officer must furnish the agency the name of the applicant or recipient and advise that the applicant or recipient:

(a) Is fleeing to avoid prosecution, custody or confinement after conviction for a felony;

(b) Is violating a condition of probation or parole; or

(c) Has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the applicant or recipient is within such official duties.

(4) Nothing in this section prohibits disclosure of information between the department and the Oregon Health Authority for the purpose of administering public assistance programs.

SECTION 5. ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,

1 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
2 659A.318, 659A.320, 659A.355 or 659A.421 **or section 2 or 3 of this 2019 Act**; or

3 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

4 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
5 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
6 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
7 659A.290, 659A.318, 659A.355 or 659A.421 **or section 2 or 3 of this 2019 Act**:

8 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
9 compensatory damages or \$200, whichever is greater, and punitive damages;

10 (b) At the request of any party, the action shall be tried to a jury;

11 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
12 ment pursuant to the standard established by ORS 19.415 (1); and

13 (d) Any attorney fee agreement shall be subject to approval by the court.

14 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
15 olation of ORS 652.220, the court may award punitive damages if:

16 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
17 with malice or acted with willful and wanton misconduct; or

18 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
19 659A.850 for a violation of ORS 652.220.

20 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the
21 court may award, in addition to the relief authorized under subsection (1) of this section,
22 compensatory damages or \$200, whichever is greater.

23 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574
24 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this
25 section, compensatory damages or \$250, whichever is greater.

26 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
27 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
28 penalty in the amount of \$720.

29 (8) Any individual against whom any distinction, discrimination or restriction on account of
30 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
31 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
32 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
33 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
34 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
35 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
36 section:

37 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
38 compensatory and punitive damages;

39 (b) The operator or manager of the place of public accommodation, the employee or person
40 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
41 damages awarded in the action;

42 (c) At the request of any party, the action shall be tried to a jury;

43 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

44 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
45 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable

1 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
 2 and

3 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
 4 judgment pursuant to the standard established by ORS 19.415 (1).

5 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
 6 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 7 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 8 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 9 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 10 manner as a person or group of persons may file a civil action under this section. In a civil action
 11 filed under this subsection, the court may assess against the respondent, in addition to the relief
 12 authorized under subsections (1) and (3) of this section, a civil penalty:

13 (a) In an amount not exceeding \$50,000 for a first violation; and

14 (b) In an amount not exceeding \$100,000 for any subsequent violation.

15 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 16 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 17 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 18 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 19 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 20 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 21 appealing an adverse decision of the trial court.

22 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
 23 or 659A.421 or discrimination under federal housing law:

24 (a) "Aggrieved person" includes a person who believes that the person:

25 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

26 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
 27 occur.

28 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
 29 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
 30 tifies that the case is of general public importance. The court may allow an intervenor prevailing
 31 party costs and reasonable attorney fees at trial and on appeal.

32 **SECTION 6.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,
 33 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

34 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 35 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 36 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 37 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 38 court may order back pay in an action under this subsection only for the two-year period imme-
 39 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 40 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 41 year period immediately preceding the filing of the action. In any action under this subsection, the
 42 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 43 cept as provided in subsection (3) of this section:

44 (a) The judge shall determine the facts in an action under this subsection; and

45 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall

1 review the judgment pursuant to the standard established by ORS 19.415 (3).

2 (2) An action may be brought under subsection (1) of this section alleging a violation of:

3 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
 4 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
 5 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 6 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 7 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 8 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 2 or 3 of this 2019 Act**; or

9 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

10 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 11 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
 12 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
 13 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 2 or 3 of this 2019 Act**:

14 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 15 compensatory damages or \$200, whichever is greater, and punitive damages;

16 (b) At the request of any party, the action shall be tried to a jury;

17 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
 18 ment pursuant to the standard established by ORS 19.415 (1); and

19 (d) Any attorney fee agreement shall be subject to approval by the court.

20 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
 21 olation of ORS 652.220, the court may award punitive damages if:

22 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
 23 with malice or acted with willful and wanton misconduct; or

24 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
 25 659A.850 for a violation of ORS 652.220.

26 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the
 27 court may award, in addition to the relief authorized under subsection (1) of this section,
 28 compensatory damages or \$200, whichever is greater.

29 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574
 30 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this
 31 section, compensatory damages or \$250, whichever is greater.

32 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
 33 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
 34 penalty in the amount of \$720.

35 (8) Any individual against whom any distinction, discrimination or restriction on account of
 36 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 37 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 38 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 39 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 40 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 41 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 42 section:

43 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 44 compensatory and punitive damages;

45 (b) The operator or manager of the place of public accommodation, the employee or person

1 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
2 damages awarded in the action;

3 (c) At the request of any party, the action shall be tried to a jury;

4 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

5 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
6 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
7 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
8 and

9 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
10 judgment pursuant to the standard established by ORS 19.415 (1).

11 (9) When the commissioner or the Attorney General has reasonable cause to believe that a
12 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
13 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
14 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
15 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
16 manner as a person or group of persons may file a civil action under this section. In a civil action
17 filed under this subsection, the court may assess against the respondent, in addition to the relief
18 authorized under subsections (1) and (3) of this section, a civil penalty:

19 (a) In an amount not exceeding \$50,000 for a first violation; and

20 (b) In an amount not exceeding \$100,000 for any subsequent violation.

21 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
22 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
23 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
24 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
25 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
26 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
27 appealing an adverse decision of the trial court.

28 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145
29 or 659A.421 or discrimination under federal housing law:

30 (a) "Aggrieved person" includes a person who believes that the person:

31 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

32 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
33 occur.

34 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
35 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
36 tifies that the case is of general public importance. The court may allow an intervenor prevailing
37 party costs and reasonable attorney fees at trial and on appeal.

38